

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

EDGAR HANSON,

Plaintiff,

v.

US BANK, NA, et al.,

Defendants.

No. CV11-5287-RBL

ORDER GRANTING DEFENDANTS'
MOTIONS TO DISMISS AND
DENYING PLAINTIFF'S MOTION TO
AMEND
[Dkt. #s 19, 20, and 24]

This matter is before the Court on the following Motions: Defendants US Banks' and MERS' Motion to Dismiss [Dkt. #19], Northwest Trustee Services' Motion to Dismiss [Dkt. #20], and Plaintiff Hanson's Motion to Amend (again) his Complaint [Dkt. #24], which appears to be in Response to the Defendants' Motions.

The factual context of the case was outlined in the court's Order Denying Plaintiff's Motions for a TRO and a Preliminary Injunction [Dkt. #32]. The Court denied the Plaintiff's Motions for injunctive relief in part because he did not and could not demonstrate any likelihood of success on the merits of his claims. Plaintiff's claims arise out of the foreclosure of the property he pledged as security for a loan he admits taking and not paying. The facts surrounding the foreclosure and the Plaintiff's claims are unremarkable.

In addition to seeking injunctive relief, Plaintiff's First Amended Complaint asserts a Declaratory Judgment claim, seeking a declaration that he owns the Property and that defendants have no interest in it.

1 The Defendants seek dismissal of Plaintiff's claims under Rule 12(b)(6). Plaintiff now
2 seeks to amend¹ his complaint to allege additional claims. [Dkt. # 24] Defendants oppose
3 amendments, arguing that the proposed claims are futile. For the reasons below, the Motion to
4 Dismiss is GRANTED and the Motion to Amend is DENIED. The case is closed.

5 **Discussion.**

6 **A. Defendants' Motions to Dismiss are Granted.**

7 Dismissal under Rule 12(b)(6) may be based on either the lack of a cognizable legal
8 theory or absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v.*
9 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff's complaint must allege
10 facts to state a claim for relief that is plausible on its face. *See Ashcroft v. Iqbal*, 129 S.Ct. 1937,
11 1949 (2009). A claim has "facial plausibility" when the party seeking relief "pleads factual
12 content that allows the court to draw the reasonable inference that the defendant is liable for the
13 misconduct alleged." *Id.* Although the Court must accept as true the Complaint's well-pled facts,
14 conclusory allegations of law and unwarranted inferences will not defeat an otherwise proper
15 [Rule 12(b)(6)] motion. *Vasquez v. L. A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Sprewell*
16 *v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). "[A] plaintiff's obligation to
17 provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions,
18 and a formulaic recitation of the elements of a cause of action will not do. Factual allegations
19 must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*,
20 550 U.S. 544, 555 (2007) (citations and footnote omitted). This requires a plaintiff to plead
21 "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 129 S.Ct. at
22 1949 (citing *Twombly*).

23 Because the Plaintiff is proceeding *pro se*, the Court extends some latitude to his
24 pleadings. The Court nevertheless finds that the bulk of Plaintiff's arguments appear to rest on
25 the assertion that Defendants are not the original creditors and therefore lack standing to
26 foreclose on the mortgage at issue. However, as this Court has concluded previously, courts

28 ¹ It appears that Plaintiff seeks to assert claims he initially asserted in his original Complaint
[Dkt. #1], but left out of his currently-operative First Amended Complaint [Dkt. #5].

1 “have routinely held that [a defendants’] so-called ‘show me the note’ argument lacks merit.”
2 *Freeston v. Bishop, White & Marshall, P.S.*, 2010 WL 1186276 (W.D. Wash. 2010) (quoting
3 *Diessner v. Mortgage Electronic Registration Systems*, 618 F. Supp. 2d 1184, 1187 (D. Ariz.
4 2009) (collecting cases)).

5 Plaintiff has not stated a claim upon which relief may be granted in his current
6 Complaint. Plaintiff’s existing claims are familiar ones about MERS’ right to assign his deed of
7 trust and the overall impropriety of the timing of the assignment of the deed of trust *vis-a-vis* the
8 transfer of the loan. Both of these claims have been repeatedly and correctly rejected. *See*, for
9 example, *Vawter v. Quality Loan Serv. Corp.*, 707 F. Supp.2d 1115 (W.D. Wa. 2010); *Cervantes*
10 *v. Countrywide Home Loans, Inc.*, 656 F.3d 1034 (9th Cir. 2011).

11 Plaintiff also asserts unidentified claims based on his allegation that MERS and US Bank
12 have entered into Consent Decrees with the Comptroller of Currency. There is no legal or
13 logical authority for the proposition that these documents are the basis for a private right of
14 action by an in default debtor such as Mr. Hanson, and he has not identified any claim based on
15 them. These claims are dismissed.

16 Plaintiff Hanson also appears to claim that the fact Defendants were previously denied
17 relief from stay during his bankruptcy is res judicata on the issue of the right to enforce the Deed
18 of Trust. As Defendants argue, such an order is not a final judgment on the merits and is not
19 entitled to res judicata effect.

20 Plaintiff’s operative First Amended complaint fails to allege any plausible claims against
21 any of the defendants. All of the existing claims are dismissed, with prejudice.

22 **B. Plaintiff’s Motion to Amend is Denied.**

23 Plaintiff Hanson seeks to amend his complaint a second time, apparently in an effort to
24 avoid dismissal. Leave to amend shall be freely given when justice so requires. FED. R. CIV. P.
25 15(a). “If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject
26 of relief, he ought to be afforded an opportunity to test his claim on the merits.” *Foman v. Davis*,
27 371 U.S. 178, 182 (1962). On a 12(b)(6) motion, “a district court should grant leave to amend
28 even if no request to amend the pleading was made, unless it determines that the pleading could

1 not possibly be cured by the allegation of other facts.” *Cook, Perkiss & Liehe v. N. Cal.*
2 *Collection Serv.*, 911 F.2d 242, 247 (9th Cir. 1990). However, where the facts are not in dispute,
3 and the sole issue is whether there is liability as a matter of substantive law, the court may deny
4 leave to amend. *Albrecht v. Lund*, 845 F.2d 193, 195-196 (9th Cir. 1988).

5 Defendants oppose amendment, arguing that it would be futile as none of the proposed
6 new claims could survive a motion to Dismiss. Rule 15(a) is liberally construed and courts will
7 grant leave to amend unless doing so would cause prejudice to the opposing party, is sought in
8 bad faith, is futile, or creates undue delay. *See Ascon Properties, Inc. v. Mobil Oil Co.*, 886 F.2d
9 1149, 1160 (9th Cir. 1989).

10 Plaintiff’s proposed Second Amended Complaint [Dkt. #24] asserts the same general
11 facts as his operative complaint, and lists a host of ‘claims’ he seeks to assert. Each claim
12 apparently seeks the same relief as does Plaintiff’s current complaint: Hanson asks the court to
13 permanently enjoin the foreclosure, award him damages, and determine that MERS was not a
14 proper beneficiary.

15 The claims asserted are described as follows: disparity; breach of contract – unanswered
16 QWR; equitable estoppel – invalid debt; erroneous credit reporting; foreclosure on incorrect
17 note; forfeiture on foreclosure; recoupment and setoff; False claim – failed endorsement;
18 erroneous alleged default; material violations - Washington Deed of Trust Act; Slander of Title –
19 notice of trustee’s sale; and Declaratory relief regarding MERS’s status as a beneficiary.

20 Defendants oppose the Amendment. They point out that Hanson admits he took out a
21 loan, and signed the Deed of Trust. He denies being in default, but has not and apparently
22 cannot allege that he has made the required payments on the Note. Defendants argue that none
23 of Hanson’s proposed claims are viable.

24 Hanson’s “disparity” claim is a variation on the “show me the note” argument that has
25 been consistently rejected, and has already been rejected in this case. This claim is not viable as
26 a matter of law, and permitting amendment to assert it would be futile.

27 Hanson’s RESPA/breach of contract claim is not viable because neither MERS nor US
28 Bank was the loan servicer, and Plaintiff has not even alleged that he sent anyone a Qualified

1 Written Request, or that any entity failed to respond to it. This claim is not viable as a matter of
2 law, and permitting amendment to assert it would be futile.

3 Defendants correctly conclude that Hanson's equitable estoppel – invalid debt claim is
4 really a FCRA claim for falsely reporting that he was in default on his loan. There is no
5 authority for the proposition that Hanson's dubious denial of the debt and the validity of the note
6 and deed of trust required any defendant to not report his default. This claim is not viable as a
7 matter of law, and permitting amendment to assert it would be futile.

8 Defendants oppose Plaintiff's proposed claims regarding the negotiability of the Note as
9 futile. Plaintiff's claims are based on his position that the Note was "private" and
10 "unregistered." This position is entirely without merit. Plaintiff's proposed foreclosure on
11 incorrect note, recoupment and setoff, failed endorsement and erroneous alleged default claims
12 are not viable as a matter of law, and permitting amendment to assert them would be futile.

13 Hanson's "forfeiture on foreclosure" claim is based on his allegation that foreclosure
14 would have adverse tax consequences for some defendants. Even if this were true (and it is not)
15 it would not affect Hanson's debt or the Deed of Trust. This claim is not viable as a matter of
16 law, and permitting amendment to assert it would be futile.

17 Hanson's proposed material violations - Washington Deed of Trust Act claim is based on
18 the timing of the appointment of Northwest Trustee Services, a claim previously rejected. This
19 claim is not viable as a matter of law, and permitting amendment to assert it would be futile.

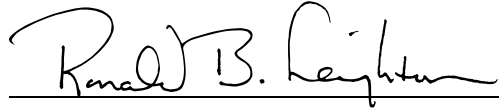
20 Hanson's slander of title claim is based on his contention that the Notice of Trustee's sale
21 was unlawful and apparently that it adversely impacted his title. This claim requires, among
22 other things, interference with a pending sale of the property. Hanson has made no such
23 allegation. This claim is not viable as a matter of law, and permitting amendment to assert it
24 would be futile.

25 Finally, Hanson's claim for declaratory relief is not viable, as MERS's role in the sale is
26 not something that Plaintiff Hanson can assert claims about in this Court. *See Vawter, supra*.
27 This claim is not viable as a matter of law, and permitting amendment to assert it would be futile.
28

1 Defendants' Motions to Dismiss are GRANTED, and Plaintiff's motion to amend is
2 DENIED. All of plaintiff's claims are DISMISSED WITH PREJUDICE, and any other pending
3 Motions are DENIED as moot.

4 **IT IS SO ORDERED.**

5 Dated this 22nd day of November, 2011.

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8 RONALD B. LEIGHTON
9 UNITED STATES DISTRICT JUDGE
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